UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/612
1 July 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 612

Cases No. 661: BURNETT
No. 662: FOURNIGAULT
No. 663: GIL
No. 664: LOPEZ
No. 665: NOGALES

Against: The Secretary-General of the International Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas at the request of Luz Mariana Burnett, Fabienne Raymonde Fournigault, Maria Teresa Pilar Gil, Ingrid Lopez and Gemma Nogales, all of them staff members of the International Maritime Organization, hereinafter referred to as IMO, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 August and 29 November 1991, and 28 February 1992, the time-limit for the filing of applications to the Tribunal;

Whereas, on 28 February 1992, the Applicants filed applications requesting the Tribunal:

> "(a) To declare that, in view of the provisions of staff rule 104.6, the nature of the Applicant[s]' post[s] and IMO's practice of international recruitment to identical posts in the French and Spanish Word Processing Units prior to, and since, the date on which [the Applicants] became ... staff member[s] of the Organization, [they] should have been granted international recruitment from the date of [their] appointment;

(b) to order the Respondent to grant international recruitment status, together with the corresponding benefits, to the Applicant[s] with retroactive effect from the date of [their] appointment."

Whereas the Respondent filed his answer on 3 August 1992;

Whereas the Applicants filed written observations on 7 December 1992;

Whereas, on 9 June 1993, the Tribunal put questions to the Respondent who provided answers on 11 and 17 June 1993;

Whereas, on 16 and 21 June 1993, the Applicants commented thereon;

Whereas, on 25 May 1993, Sylvette Blanco, Andrée Charlett, Michèle Eldridge and Margarita Rada-Ortiz filed requests for intervention in the case under article 19, paragraph 1 of the Rules of the Tribunal and on 22 June 1993, the Respondent provided his comments thereon;

Whereas, on 24 June 1993, the Applicants commented on the Respondent's submission on the interventions;

Whereas the facts in the case are as follows:

Luz Mariana Burnett, a national of Peru, entered the service of IMO on 1 November 1978. She was initially offered a fixed-term appointment, through 12 December 1978, as a Clerk-Typist at the G-5, step IV level, in the Spanish Translation Section of the Conference Division. The letter of appointment, as well as the Personnel Action Form implementing the appointment, stated that she would "be regarded as locally recruited" and would "not be eligible for home leave or non-resident's allowance." The Applicant served thereafter on further fixed-term appointments, from 15 January 1979 through 31 March 1979 and from 1 April 1979 through 30 June 1979. On 1 July 1979, the Applicant received a probationary appointment and on 30 July 1980, a regular appointment, on the same terms and conditions as contained in the original letter of appointment.

In a memorandum dated 16 August 1988, the Applicant asked the Director of the Administrative Division to change her status from

locally recruited to internationally recruited, on the ground that under staff rule 104.6(b), the determining factor whether to recruit staff for a post on a local or an international basis is "the nature of the post and not whether, at the time of recruitment, local recruits were available for the post". She also argued that "the present [recruitment] policy is unfair in that it involves recruitment on an unequal basis to posts which are in all respects 'identical'."

On 11 January 1989, the Head of the Personnel Section wrote to the Acting Chairman of the Staff Committee, asking him to inform the Applicant and three other staff members who had made a similar request for a change of status, that their requests had been rejected. On 8 February 1989, the Applicant asked the Secretary-General to review the administrative decision not to change her status from local to international. After an exchange of correspondence between the Chairman of the Staff Committee and the Head of the Personnel Section, on 25 July 1989, latter informed the Applicant that the Secretary-General had "given the most careful consideration to [her] request to review his decision with regard to [her] recruitment status" and "after due deliberation" had concluded that there was "no case for any change in your status". On 18 September 1989, the Applicant Burnett lodged an appeal with the Joint Appeals Board (JAB).

Fabienne Raymonde Fournigault, a national of France, entered the service of IMO on 17 January 1989, on a two month fixed-term appointment at the G-4, step 1 level, as a Word Processor Operator in the French Word Processing Unit of the Conference Division. The letter of appointment, as well as the Personnel Action Form implementing the appointment, stated that the Applicant would "be regarded as locally recruited" and would "not be eligible for home leave". She received a probationary appointment, with effect from 1 April 1989, and a regular appointment, with effect from 2 July 1990.

In a memorandum dated 13 January 1989, the Applicant's supervisor asked the Chairman of the Staff Committee to intercede to

obtain international recruitment status for the Applicant, on the ground that the practice of local recruitment was a "new rule" which ought to have been announced and should not be applied to her. In a memorandum dated 16 February 1989, the Applicant requested the Head of the Personnel Section, to reconsider her status and grant her international recruitment status.

On 29 March 1989, the Applicant wrote again to the Head of the Personnel Section, referring to her request. In a reply dated 31 March 1989, the Head of the Personnel Section informed the Applicant that a decision on her request would be taken after its being reviewed together with others from members of the Spanish Work Processing Unit.

In a memorandum dated 25 July 1989, the Head of the Personnel Section informed the Applicant that the Secretary-General had rejected her request for a change of status. On 7 August 1989, the Applicant asked the Secretary-General to review the decision. Not having received a response, on 18 September 1989, the Applicant Fournigault lodged her appeal with the JAB.

Maria Teresa Pilar Gil, a national of Spain, entered the service of IMO on 4 February 1980. She was offered a fixed-term appointment at the G-4, step II level, from 4 February 1980, through 31 March 1980, as a Clerk-Typist at the Spanish Translation Section of the Conference Division. The letter of appointment, as well as the Personnel Action Form implementing the appointment, stated that the Applicant would "be regarded as locally recruited" and would "not be eligible for home leave or non-resident's allowance." The Applicant received a regular appointment on 9 February 1981.

On 14 February 1980, the Applicant wrote to the Head of the Personnel Section, stating that the terms of her contract should have been "as if IMO had sent the contract to [her] in Spain." On 24 February 1981, she wrote to the Director, Conference Division, asking "that in all fairness" she "should be considered as

"internationally recruited." On 2 May 1985, she asked for a further review of the matter. According to the record, on or about 16 April 1988, the Applicant wrote to the Director, Administrative Division, through the Staff Committee, requesting a change of status from local to international recruitment. On 11 January 1989, the Head of the Personnel Section wrote to the Acting Chairman of the Staff Committee, asking him to inform the Applicant, as well as the other staff members who had made a similar request for a change of status, that their requests had been rejected. On 8 February 1989, the Applicant asked the Secretary-General to review that decision. After an exchange of correspondence between the Chairman of the Staff Committee and the Head of the Personnel Section, on 25 July 1989, the latter informed the Applicant that the Secretary-General had "given the most careful consideration to [her] request to review his decision with regard to [her] recruitment status" and after due deliberation" had concluded that there was "no case for any change in [her] status." On 18 September 1989, the Applicant Gil lodged an appeal with the JAB.

Ingrid Lopez, a national of Colombia, entered the service of IMO on a probationary appointment at the G-4, step II level, on 1 November 1988, as a Word Processor Operator in the Spanish Word Processing Unit. The letter of appointment, as well as the Personnel Action Form implementing the appointment, stated that the Applicant would "be regarded as locally recruited" and would "not be eligible for home leave travel". The Applicant's appointment was converted to a regular appointment with effect from 1 November 1989.

In a memorandum dated 15 November 1988, the Applicant objected to the fact that she was locally recruited. On the same date, the Acting Chairman of the Staff Committee wrote to the Secretary-General arguing that the Applicant should have been given the status of an international recruit, based on staff rule 104.6.

On 6 December 1988, the Head of the Personnel Section informed the Applicant that the matter was being reviewed. On 11 January

1989, the Head of the Personnel Section wrote to the Acting Chairman of the Staff Committee, asking him to inform the Applicant and three other staff members, who had made a similar request, that the Secretary-General had decided not to change their status. In a memorandum dated 13 February 1989, the Head of the Personnel Section informed the Applicant of the grounds on which the Secretary-General had rejected her request for a change of status.

On 16 February 1989, the Applicant requested the Secretary-General to review that decision. On 25 July 1989, the Head of the Personnel Section informed the Applicant that the Secretary-General maintained his decision. On 18 September 1989, the Applicant Lopez lodged an appeal with the JAB.

Gemma Nogales, a national of Spain, entered the service of IMO on 24 March 1986, on a probationary appointment at the G-4, step VI level, as a Word Processor Operator in the Spanish Pool of the Conference Division. Her appointment was converted to a regular appointment, with effect from 26 August 1987. The letter of appointment, as well as the Personnel Action Form implementing the appointment, stated that the Applicant would "be regarded as locally recruited" and would "not be eligible for home leave".

On 10 August 1988, the Applicant wrote to the Director of the Administrative Division, through the Staff Committee, requesting a change of status from local to international recruitment.

In a memorandum dated 11 January 1989, the Head of the Personnel Section wrote to the Acting Chairman of the Staff Committee, asking him to inform the Applicant, as well as the other staff members who had made a similar request for a change of status, that their requests had been rejected. On 8 February 1989, the Applicant asked the Secretary-General to review the decision. On 25 July 1989, the Head of the Personnel Section informed the Applicant that the Secretary-General maintained his decision. On 18 September 1989,, the Applicant Nogales lodged an appeal with the JAB.

The JAB decided to consider this appeal, together with those of the Applicants Burnett, Fournigault, Gil and Lopez. It adopted its report in December 1990. Its conclusions and recommendations read as follows:

"CONCLUSIONS AND RECOMMENDATIONS

5.1 With regard to the present appeals the JAB concludes that:

1. Staff rule 104.6, applicable to the General Service category, specifies two independent conditions for international recruitment, neither of which are satisfied by the appellants. Therefore, the Administration acted according to the prevalent interpretation of staff rule 104.6, at the time, when determining the initial appointment of the appellants as local recruits.

2. However, the Administration was inconsistent in the application of staff rule 104.6 with regard to the appellants. At approximately the same time as the appellants were contracted as local recruits, because they were hired locally, other recruits to identical posts were contracted as international recruits, according to staff rule 104.6 subparagraph (a), because they were hired from abroad, although in the Administration's own words the posts could have been filled by local recruitment. This, in the JAB's understanding, indicates an inconsistency in the application of rule 104.6 which resulted in an opportunistic hiring policy with an unequal and, therefore, unjust treatment of equal cases with regard to posts that require identical qualifications. The JAB considers that the Administration should not have interpreted staff rule 104.6 with so much flexibility.

5.2 In view of the above, the JAB recommends to the Secretary-General that:

1. The recruitment policy for the General [Service] staff should be kept flexible in accordance with local labour market conditions of offer to posts that require non-local language capabilities, however, the policy should always be clearly defined at any one time

by the Secretary-General in writing. In this respect, all those posts in the General Service category for which international recruitment at any time is necessary should be listed. Changes should only be made directly by the Secretary-General, also in writing.

2. The status of the vacancy for General [Service] staff posts, vis-à-vis its local or international status, should be clearly indicated in the vacancy notice for the candidate's information and clearly explained and pointed out to him or her when signing the contract.

3. The Secretary-General may wish to consider addressing the injustice caused by the inconsistent application of staff rule 104.6."

On 28 February 1991, the Head of the Personnel Section transmitted to the Applicants a copy of the JAB report, stating:

"The Secretary-General has reviewed the report and welcomes the Joint Appeals Board's confirmation that the Administration 'acted according to the prevalent interpretation of staff rule 104.6, at the time, when determining the initial appointment of the appellants as local recruits.' He therefore:

(a) accepts the recommendations contained in paragraph 5.2.1 bearing in mind the characteristics of the United Kingdom labour market for language skills. To this end, the Administration will designate those General Service posts for which international recruitment is deemed to be necessary. Accordingly, the General Service staff in the Arabic, Chinese, and the Russian Sections are regarded as falling within this category. This categorization will of course be kept under review and any changes will be promulgated in writing;

(b) wishes to confirm (with regard to paragraph 5.2.2) that for over two years all General Service Vacancy Notices have carried an indication as to the recruitment status of the post concerned. This has also been

appropriately reflected both in contracts and Personnel Action Forms, and the practice will be maintained; and,

(c) with regard to paragraph 5.2.3, does not consider the Administration's particular application of staff rule 104.6 caused any 'injustice' with respect to the recruitment of the appellants.

..."

On 28 February 1992, the Applicants filed with the Tribunal the applications referred to earlier.

Whereas the Applicants' principal contention is:

1. The Respondent, in giving the Applicants the status of locally recruited staff, improperly applied staff rule 104.6, thereby violating their terms of appointment.

Whereas the Respondent's principal contentions are:

1. There is no incompatibility between the determination of the Applicants' status as locally recruited and the terms of their employment under staff rule 104.6 .

2. The determination was consistent with the Staff Regulations and Rules, and the terms of the contracts of employment signed by the Applicants.

The Tribunal, having deliberated from 9 June to 1 July 1993, now pronounces the following judgement:

I. The Tribunal decided that the cases be joined for the purposes of hearing and adjudication.

II. Staff rule 104.6 is at the centre of these cases. It states:

"Staff members who have been recruited for service in the General Service category shall be regarded as having been locally recruited unless:

(a) They have been recruited from outside the U.K.;

or

(b) The post for which the staff member has been recruited is one which, in the opinion of the Secretary-General, it would otherwise have been necessary to fill by recruitment from outside the United Kingdom."

III. The parties are agreed that none of the Applicants was recruited from abroad, that they were in the United Kingdom when recruited. However, the Applicants ask how the Administration justifies the local recruitment of the Applicants, in the light of the practice of international recruitment in other cases. They refer to a list of other staff who were recruited internationally to similar posts, although they were, according to the Applicants, resident in the United Kingdom at the time of their appointment. They refer to a memorandum from the supervisor of the French Word Processing Unit to the Chairman of the Staff Committee, expressing the view that not only was international recruitment to posts in the French Word Processing Unit necessary, but that there had in the past been a practice of such international recruitment which was changed without prior notification. With reference to the case of the Applicant Fournigault, the Supervisor, in a further memorandum, said that all of the recruits were recruited internationally and, with one exception, had been in London already at the time of their recruitment. (When the Applicants sought similar information from the Spanish Word Processing Unit, they were refused).

IV. However, the Tribunal has been furnished with a list of staff members recruited from 1974 onwards. There are examples in the list of local recruits who were living in London when recruited; of those who were internationally recruited from abroad; and there are persons

who were living in London at the time of their international recruitment. The latter are described as having been under supernumerary contract. There is no doubt, therefore, even from the IMO's own list, that certain persons with London addresses were recruited internationally.

However, a further communication was received by the Tribunal from the Respondent, dated 17 June 1993. It lists seven individuals who had previously been among those listed in the IMO document as having been internationally recruited and having London addresses with supernumerary contracts. The seven listed are Mrs. S. Choi (Miss S. Calligaro), Miss D. Dupas (subsequently Mrs. Broderick), Miss S. Délépine (subsequently Mrs Poirier); Miss M-J. Taddei; Miss C. Faudot; Miss C. Carlier and Mrs E. Medves.

In relation to one of these, Miss Délépine, it is said that her Personal History form showed London as her "present address" and France as her mailing address. Her Personnel Action form showed her "recognized home" as Paris. Her travel claim was paid from Paris to London. It seems to the Tribunal that the contents of various documents of which the Tribunal has received certified true copies is of relevance. Mrs. Délépine applied for the post by letter of 18 November 1983. In the letter, she states, that she has been a Typist with the French Typing Pool of IMO since 4 January 1983. She was offered the post on 29 December 1983 and accepted it by letter of 4 January 1984. Her probationary period had, in fact, started on 1 January 1984. It is clear that not only had Mrs. Délépine been working for IMO for an appreciable time, but that she was indeed resident in London.

The Tribunal, from the documents of which it has had sight has also obtained information about some of the others listed in the communication of 17 June 1993.

In that document, Mrs. Choi (or Miss Calligaro) is referred to as having had a short period as a supernumerary. Her Personal History form furnished with the application for the position, showed France as her "present residence" and the United Kingdom as her mailing address. Her Personnel Action form showed France as her

recognized home. Her travel claim was authorized from France. Her supernumerary contracts as a French Typist from 18-22 July, 25-29 July, 1-31 August and 1-30 September 1977, list her with a London address. A certified true copy of the last appointment (1-30 September), dated 10 August 1977 and giving her address as 31 Warwick Avenue, Edgware, Middlesex, has been made available to the Tribunal, together with a certified true copy of a letter dated 27 September 1977, to Mrs Choi, at the same address, offering her the appointment. The letter stated that she was required to enter upon her duties on 1 October 1977 and her probationary period started on that date.

Again, in the case of Miss Dupas (Mrs. Broderick), a certified true copy of her Personal History form, dated 14 September 1983, gives London as her mailing address and England as her residence for the past 5 years. While she does appear to have been back in France for a period prior to her supernumerary contracts, certified true copies of these contracts show them to have been from 25-30 September 1983; 1-31 October 1983 and 1 November 1983 to 31 January 1984. During the last contract, on 7 November 1983, she applied for her IMO post and on 23 December 1983, she was offered the appointment. Her probationary period started on 1st January 1984.

Miss Faudot, in the submissions of Counsel for the Applicants, is listed as having been on supernumerary contracts for the periods 1-4 November, 5-9 December and 12-16 December 1983 and 6-10 February 1984, 1 March-31 May 1984 and 1-30 June 1984. The Tribunal has seen certified true copies of the last two contracts and of her application dated 24 May 1984, for the post in the French Typing Pool. Her letter of appointment is dated 18 June 1984 and her probationary period began on 1st July 1984. Her address in the two supernumerary appointment documents is Harrow, Middlesex.

Mrs. Medves had four local contracts - 23-27 February 1987 and three others for March, April and May 1987. The Tribunal has seen a certified true copy of a memorandum from the Internal Auditor

confirming this. Similarly, certified true copies of the February 1987 and the 1-30 April 1987 contracts reveal a London address. By a letter dated 1 April 1987, giving that address, Mrs. Medves applied for the post. A letter offering the appointment is dated 1 June 1987 and her probationary period was to start on 1 June 1987.

It is clear to the Tribunal that these four cases and Ms Délépine were in London at the time of their appointments and yet they were afforded international status, unlike the Applicants, whose case is now before the Tribunal.

V. The Applicants contend that staff members doing the same job, in the same unit and with similar qualifications have been recruited internationally or locally for seemingly purely arbitrary reasons and that this cannot be justified by the objective standards set forth in staff rule 104.6. While the rule allows the Secretary-General to form an opinion of conditions of the local labour market and to decide whether the requisite language skills for particular posts are available locally, it does not permit him to be inconsistent.

VI. The Respondent maintains that in cosmopolitan London, the Organization does not consider it necessary to recruit General Service staff from abroad. Had the view been taken that the requisite skills were not available in the United Kingdom market, the necessary steps would have been taken to recruit from abroad. He contends it would not have been necessary to fill any of the posts in question from abroad. This opinion is based on the constant availability in London of persons with language skills in French and Spanish for all areas of IMO General Service work. These objective criteria provide a reasonable basis for making local appointments and if necessary, for exercising the discretion granted the Secretary-General in permitting an exception to local recruitment.

VII. Before dealing with the seeming anomaly of persons similar to the Applicants being appointed internationally, the Tribunal should

refer to the terms of the relevant rule. The thrust of it is that persons in the General Service category are locally recruited - international recruitment occurs by way of exception. The exception relating to residence abroad is not at issue in this case. The Tribunal must, therefore, turn its attention to the other exception, contained in subparagraph (b) of article 104.6. The application of this section depends on the opinion of the Secretary-General. Do the Applicants come within the scope of this exception? The Respondent says no, on the basis of his opinion that it would not "otherwise" have been necessary to fill the posts from outside the United Kingdom.

VIII. The Tribunal has to examine the Respondent's action in the case of the Applicants in the context of his action in relation to others known to have been recruited internationally, while present in London. In order to do this, it is necessary to examine the text of the relevant rule - 104.6. The rule states that staff members who have been recruited for service in the General Service category shall be regarded as having been locally recruited unless "(a) they have been recruited from outside the United Kingdom".

One could stop there and argue that because the Applicants were not recruited from abroad, they must therefore be regarded as having been locally recruited. However, to do that would be to render subparagraph (b) of the rule meaningless and indeed unnecessary. The remainder of the rule states "or (b) the post for which the staff member has been recruited is one which in the opinion of the Secretary-General it would otherwise have been necessary to fill by recruitment from outside the United Kingdom."

In the Tribunal's view, subparagraph (b) simply cannot be ignored. It is there and the rule must be addressed in its entirety. It would perhaps be the least complicated way of looking at this rule, to simply say that if a person is recruited in London, that person is recruited locally. But this, in the Tribunal's view, would

be erroneous and mistaken. One must go on to deal with the possible necessity of the particular post being filled from outside the United Kingdom.

IX. The Respondent says in relation to the Applicants' posts, that it would not otherwise have been necessary to fill them from outside the United Kingdom. But how can he say this when in other similar cases he has recruited staff members internationally? On the basis of his opinion, he has given to certain staff members international status, yet he has deprived other similarly situated staff members, the Applicants, of this status.

The Respondent's argument that, in London, Spanish and French speakers are readily available and so, it is not necessary to fill the posts from outside the United Kingdom, collapses in the face of the recruitment of certain staff members internationally, to these posts. The Respondent, by his action in the case of others, had taken these posts outside the realm of local recruitment. It is the Tribunal's view that the Respondent could not properly have recruited the Applicants in any way other than internationally.

X. The Tribunal is also conscious of the fact that the Respondent's action in the case of the Applicants has resulted in unfairness, inequality and inequity. Persons, similar in every relevant way, have been treated so differently, that some, namely those internationally recruited, can avail themselves of many benefits, while others, namely those locally recruited, are deprived of them. It is beyond argument that staff rules must be applied fairly and impartially. The Tribunal's finding that the Applicants are entitled to international recruitment status will serve to right this manifest wrong and ensure compliance with the principle of equal treatment.

XI. In regard to the Respondent's argument that the Applicants are bound by their contracts of employment, the Tribunal's view is that

it would defeat equity if the signing of a contract of employment could be used to lend legitimacy to such an inequitable situation. Indeed, the argument is also rejected on the ground that the rules and regulations must be paramount to any such purported contract.

XII. The Tribunal, in adopting the recommendations of the JAB, as to the future practice of the Respondent, emphasizes that its decision in relation to these Applicants cannot be taken as binding in regard to future appointments. The Applicants have, for some time and, indeed, some of them for a considerable time, been working with other persons who were entitled to benefits which were not available to them. The decision in this case rights this inequity. In future, staff members will be recruited in accordance with the newly-adopted policy of the Respondent under which there is specific reference in vacancy notices to "local recruitment status only".

XIII. For the foregoing reasons, the Tribunal holds that the Applicants should be granted international status from the dates of their appointments. The Tribunal orders the Respondent to grant them international recruitment status, together with corresponding benefits, with retroactive effect from the dates of their appointments. Each of the Applicants should be paid the amounts which she has lost through inability to avail herself of the relevant benefits since appointment.

XIV. The applications for intervention advance similar contentions to those of the Applicants and are therefore admitted.

The Tribunal has considered the Respondent's submission that the applications for intervention are time-barred. The Tribunal rejects this submission on the basis that the Applicants' case has not been found to have been time-barred and, therefore, the question of whether the applications for intervention are time-barred does not arise. In considering this matter, the Tribunal is also conscious of

the provisions of article 19 of the Rules of the Tribunal to the effect that intervention may take place at any time.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 1 July 1993

R. Maria VICIEN-MILBURN
Executive Secretary

* * *

CONCURRING OPINION BY MR. LUIS DE POSADAS MONTERO

I. I cannot agree with the majority of the members of the Tribunal as far as the interpretation given by them to staff rule 104.6 is concerned.

In my view, staff rule 104.6 enables the Secretary-General to hire personnel in accordance with subparagraph (a). As far as subparagraph (b) is concerned, it should be construed as enabling the Secretary-General to grant international status to staff members recruited from within the United Kingdom when it would appear to be impossible to obtain a suitable candidate, unless the benefits that go with international status are granted.

II. Therefore, according to this construction, the Secretary-General, in certain cases, can grant international status to candidates living in the United Kingdom at the time of recruitment.

But the Secretary-General cannot avail himself of this authority in a capricious or inconsistent way and cannot grant international status in some cases while not granting it in others that are similar. This appears to have been the case with the Applicants vis-à-vis other staff members who were also recruited while in the United Kingdom at the time of recruitment and to whom international status was granted.

As a consequence, it must be concluded that the Applicants have been treated inequitably and unfairly and that the Administration should redress this inequality.

It is for the foregoing reasons that I concur with the decision taken by the Tribunal, even if I do not agree with the considerations that have led to it.

(Signature)

Luis de POSADAS MONTERO
Vice-President, presiding

Geneva, 1 July 1993

R. Maria VICIEN-MILBURN
Executive Secretary